



LAKES MANAGEMENT ADVISORY COMMITTEE
NH Lakes Management and Protection Program

New Hampshire Department of Environmental Services
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MINUTES
July 28, 2006 Meeting
Laconia Police Station Community Room
9:30 a.m. - 11:00 a.m.

Members Present:

Joanna Pellerin, Vice Chair
Wendell Berry
Joe Farrelly
Mark Hemmerlein
Mitchell Kalter
James Morash
Larry Sunderland
Rich Tichko

Representing:

State Conservation Committee
NH Business and Industry Assn
NH Lakes Association
Commissioner, DOT
NH Fish & Game Commission
Tourism, NH Travel Council
Conservation Community
Exec. Dir., Fish & Game Dept.

Term:

August 1, 2006
July 8, 2007
August 1, 2006
Indefinite
August 22, 2006
August 1, 2007
September 19, 2007
Indefinite

Members Not Present:

Jim Haney, Ph.D., Chair
Ken Gallagher
Mark Gallagher
Ken Jordan
Marsha LaVallee-Huntoon
Johanna Lyons
Fred Murphy
Vacant
Vacant

Scientific Community, UNH
Office of Energy and Planning
Commissioner, DOS
NH Association of Realtors
Conservation Commissions
Commissioner, DRED
Member, Planning Board
Elected Municipal Official
Commissioner, Agr. Markets and Food

August 22, 2007
Indefinite
Indefinite
June 27, 2008
August 22, 2007
Indefinite
August 1, 2008
August 22, 2003
Indefinite

GUESTS

Richard and Ann Corr
Matt Urban

Property Owners, Mascoma Lake, Enfield, NH
DOT

Staff Present

Jacquie Colburn
Jody Connor
Laura Weit
Marie Loskamp
Tim Drew
Darlene Forst

Lakes Coordinator, Watershed Management Bureau
Director, Limnology Center
Asst. Planner, Watershed Management Bureau
Executive Secretary Watershed Management Bureau
Commissioner's Office
Shoreland Protection Program

The Meeting Was Called to Order

Jody Pellerin, Vice Chairman, called the meeting to order at 9:35 a.m.

I. Introductions/Minutes/Committee Business

1) Meeting Minutes: June 23, 2006

- **Jim Morash made a motion to accept the minutes as presented. Larry Sunderland seconded the motion and the motion carried.**

2) Committee BusinessTravel Vouchers -

Jacque passed out travel vouchers.

Member appointments: Joe F., Mitch K. and Jody P. appointments are expiring in August. Joe and Jody's appointments expire August 1st and Mitch's appointment expires August 22nd. Jody Pellerin's replacement – Michele Tremblay has been nominated and needs G&C confirmation.

The NHLA is working on an appointment. Mitch is working on being reappointment.

3) LMAC Meetings: 6/year with 2 lake visits

Meetings to Date: 1/27/06, 2/24/06, 3/24/06, 4/28/06, 5/19/06; 6/23/06; 7/28/06

No August Meeting – Jim Haney cannot attend July or August meetings and with Jody's term expiring, there is no one to chair the meeting. The committee members were asked who could attend the August meeting and of those present only 2 voting members are available for the August meeting.

- **Jacque will send an email to Jim Haney as to whether there is any day in August that he could attend a meeting either at DES or at UNH.**

Next Meeting: September 22, 2006 – Suggested change of plans:
Do NOT visit North Country Lakes, instead meet at DES.

- **Committee agreed to meet at DES for September's meeting.**

Jacque informed the committee, that either Jennifer Patterson or Allan Brooks of the Attorney General's office will speak to the LMAC at the September meeting regarding public trust. Allan is available for our September meeting.

II. Surplus Land Reviews**1) Status of Requests – Jacque Colburn**

Opinion from AG's office - The request submitted by LMAC, RMAC and CORD in June 2005 has been reviewed by several bureaus within the AG's office and has been sent on to the Attorney General Kelly Ayotte for her review. This will be a formal AG opinion which will be published. This opinion will also address the request of DOT.

Meeting with the Governor – Jacque and Laura met with Katja Fox of the Governor's Office and no meeting has been scheduled. Jacque will follow up with Alice Chamberlain after she returns from leave on August 1st.

2) DOT SLR 06-02: Corr, Mascoma Lake, Enfield - Jacque Colburn

Jacque pointed out that the LMAC does not have an appeal process in place, but according to Gretchen Hamel, Coordinator of the DES Legal Unit, we can listen to the public without an appeal process being in place. A draft general discussion and guidance paper of an appeal process was supplied by Gretchen Hamel and Jacque distributed it to the committee members. While we are not sure of our review authority because we have not yet heard from the AG's office, the LMAC can listen to Ann Corr and ask questions. Jacque reviewed the sequence of events, timeline, correspondence, and photos to date for the Corr request.

Ann Corr passed out some photos and then spoke to the Committee and asked questions of the Committee. She explained that they bought the property last fall, it needed a new dock and the old dock didn't have a permit. The Corrs were told by the real estate agent before they bought the property that they would need to get a permit from the Rail Division of DOT. Ann contacted DOT and she was told that most of the requests were granted, that people were crossing live rail lines. So the Corrs then submitted the request along with a few photos to DOT and they were of the understanding that the request would go to CORD. Based on that information they bought the property.

In November DOT told them that they were holding off on their request because changes were being made with the CORD process. Then in January DOT told them that the request was going to the LMAC instead of CORD. Anne said that they were confused about how the process works.

Anne went on to explain that Jacquie and Laura weren't able to do a site visit and see the property in March due to the weather. Their property is 5 acres and has 975' of frontage along the rail trail, which runs parallel to the shore. Less than 1 acre is cleared and the slope along the water is rocky, after the steps the water drops off quickly and after you get past the original rocks it is sandy. Anne also pointed out that the public boat access is really a mile and a half drive from their home, not 1500' as indicated in the LMAC checklist. We put our kayaks on our trailer and take them to the public boat ramp. The rail trail provides public access and it is used by the public to access the water. For the rest of lake the shoreline is mostly privately owned and dock permits that have been applied for have been granted. Anne questioned whether their one proposed dock would impact water quality. Anne said that the only dock permits which were not granted were those where the property owner didn't provide all of the information. Anne said that they read through the LMAC criteria and didn't find anything, which in their minds justified a denial. Anne has also investigated other leases permitted by state agencies. There are lakes in NH where DES leases land to property owners for docks. Those leases are \$2.50 per foot and this is \$25 per foot from DOT. Another question Anne had was the DOT fee to construct a crossing, since this is an existing rail trail no structure would need to be constructed. Finally Anne said that they would appreciate it if the committee would reconsider their denial of the surplus land request.

Jim Morash asked what type of dock they wish to construct, if they are taxed on the shorefront, and about their access to the lake. Anne responded – a seasonal dock, they are not taxed on the shorefront and they were of the understanding from DOT that they could get access to the lake. Bud Berry asked if the railroad went through when the previous property owner was there. Anne was not sure of the rail construction and when it was discontinued. Jim Morash asked if there was a dock in front of their property when they first moved in. Anne said that there was a dock there and it was rotting. Jacquie passed around the real estate listing (which Anne had provided) which included a photo of the dock. Jim said that since the same voting constituency that voted originally on the request are not here today that he would like to bring this issue up at a future meeting. Joe Farrelly asked how many properties contiguous to the Corrs have access to the ROW. Anne Corr said that there is one property west of them with 400' frontage and beyond that the property owners actually own the frontage. To the east there is an 800' section which is very steep and above this one street which has several houses, but no access to the lake. Beyond that the rail trail goes landward and the public uses an area between the trail and the shoreline. Larry Sunderland asked Rick Tichko if F&G has any comment on the endangered species. Jacquie offered the information that she had received from the Loon Preservation Committee regarding the number of loons and where they nest on the lake, which is not near the surplus land request. Larry said that last time he was concerned about the endangered species and believes that has been resolved. Jim Morash said that he thought it was very useful to have the Corrs speak to the committee and it is worth discussing at a future meeting.

- **Joe Farrelly made a motion to table the decision until the September meeting, Jim Morash seconded the motion and the motion carried.**

Bud Berry thanked the Corrs for coming and that he hoped that they appreciate how they are part of a much larger issue. Anne Corr said that the LMAC says that they are advisory to us, but DOT says that when LMAC says no, then we say no; so who has the authority. Jim Morash replied that we cannot speak for DOT, but when DOT says no that they are using the information that they have. Mark Hemmerlein said that DOT's current position is to reference the law that indicates that the LMAC has the right to say to no to the lease, as they have in

the past. Mark also added that DOT has also asked the AG about the LMAC and the RMAC authority and their authority as well.

Darlene Forst then asked the Corrs how much the realtor information influenced their decision to repair, maintain or not maintain the dock when they were purchasing the property. Ann said that repairing or maintaining wasn't the issue; since it is seasonal you can still put a dock back. She said that they wanted to follow the legal process and at that time it was not perceived to be a real issue.

Seeing no further questions, Vice-Chair Pellerin brought the discussion to a close. The committee thanked the Corrs for attending and they in turn thanked the committee for their time.

Jacque said that the Corrs are doing a lot of research and asking many very good questions and that it is useful to have the public's perspective regarding the process. Bud Berry commented that it would be interesting to know the difference in value of a property with an effective lease. Mitch Kalter asked if the leases are transferable and Mark Hemmerlein confirmed that they are.

Joe Farrelly asked Jody Connor about the water quality of the lake. Jody responded that many years ago the lake experienced cyanobacteria blooms. The last time the lake was treated was 1982 (with copper sulfate). The lake has come back and is now in the mesotrophic range. Joe said that he is also concerned about abutting property owners to the railroad right-of-way also asking for leasing, and is a precedent being set? Jim Morash and Jacque responded that the shorefront properties would have to be subdivided first which would require local planning and zoning approval. Darlene pointed out that there was a dock there and did DOT take possession of the rail corridor after the dock was there? If so, then how does this affect the situation? Rich Tichko said that a title search should be done. Mark Hemmerlein says that a title search will be done next. Rich Tichko said that where DOT has right-of-ways that abut public waters (public trust) should they lease that property. Mark Hemmerlein responded that DOT has a statute that tells DOT that it must do this.

Joe Farrelly read an article from the Laconia Daily Sun which Joe felt was vital to the discussions stating that making judgments on something that belongs to the public, the public should receive something. Lake Waukegan opposed leases as it would become a precedent that would be set. We need to put public interest ahead of private interest. State should donate land to towns instead of leasing land. The issue is public land and what we need to do.

- Jacque will forward a copy of this article, as well as 2 other articles from the Laconia Daily Sun to all members of the LMAC.
- Darlene said that the comment in that the article regarding DES position on docks prior to the law change is factually incorrect and that she would like to respond to it. There are discrepancies in the article and she will forward her comments (via email) to clarify those discrepancies.

3) CORD SLR 06-007: Scenic Ledges condominiums, Lake Winnepesaukee, Laconia (new SLR for committee's consideration) Laura Weit

Scenic Ledges seeks to lease 383 feet on Lake Winnepesaukee to allow permitting of a docking structure and construction of a pedestrian crossing across an active railway to access public waters. Laura gave a presentation summarizing the information she had compiled, the site visit, and the information from the Natural Heritage Inventory. The parcel is potential habitat for wintering eagles, which are an endangered species, and a nesting ground for mallards. The parcel was reviewed against LMAC's criteria and LMAC's checklist. Aerial photos show it is surrounded by the Aqua Vista and Aqua Sole development.

Mark Hemmerlein said that according to the tax maps, Scenic Ledges already owns property on the lake and therefore questioned if this surplus land review needs to come before the LMAC; Jacque concurred. Mark said that they may only need permission/access to cross the railroad tracks. According to Mark they own 236.5', but they are requesting to lease 383'. Darlene said with their existing frontage they could have 4 slips and with 12

proposed condominiums that they would need to lease additional waterfront to provide another 8 slips.

Jim Morash said that he had an aerial photo of the lake from the Fourth of July, and that only 1570 boats were active during the one hour count that was conducted, however one of the most concentrated areas of use was between Weirs Beach and Meredith Bay. Jim said that the railroad corridor is very busy. Mark Hemmerlein says that DOT asks the train operator if there is a safety issue before moving ahead with the lease. Jacquie asked if selling the condominiums with boat slips is a commercial operation, because the DOT lease prohibits commercial activity. Mark Hemmerlein responded no, that the lessee is not operating a marina; that these are a real estate transaction. Bud Berry asked if during the review, was any public benefit identified for leasing other than the lease fee? Laura responded no.

- **Jim Morash made a motion to recommend against disposal of the property according to the LMAC criteria. Motion seconded by Joe Farrelly and the motion carried.**

III. Lakes Forum Update

1) Status of Action Items and Agency, NHLA and LMAC Responses by Laura Weit

The Lakes Forum was held on February 24th. Action Items were sent out to the state agencies, the NHLA and the LMAC. Responses have been received from NHLA, DOT, DRED, DES, OEP and the LMAC. We still have not received responses from the F&G, DAMF, Dept. of Safety and the Governor's Office.

The meeting adjourned at 11: 15 am.

Site Visit – Proposed Winnisquam Boat Ramp Facility – Cancelled due to lack of time.

On-Water Tour – Lake Winnisquam

The committee spent approximately 2 hours touring Lake Winnisquam. During the tour, the committee observed and discussed the following:

- Sun Lake Village Development; SLR 06-001
- Personal Watercraft (Jet Ski) rentals
- The rafting which occurs north of the Mosquito Bridge.
- The amount and kind of development surrounding the southern shoreline of the lake.
- Ahern State Park

Jody Connor also conducted some water quality sampling during the tour.